

Application No. 09/859,640
Reply to Office Action mailed October 19, 2005

Patent
Attorney Docket No. 85773-374

REMARKS / ARGUMENTS

A. Summary of Amendments

The present application still contains 40 claims.

The claims are unchanged from the previous communication submitted to the USPTO on September 16, 2005.

B. General Comment I

In the Office Action, the Examiner states that the Applicant's arguments with respect to claims 1-38 and 40 have been considered but are moot in light of the new ground(s) of rejection necessitated by the Applicant's amendment.

In the prior Office action, the Examiner had rejected claims 1, 2, 4-14, 16-28, 30-38 and 40 under 35 U.S.C. §102(e) as being anticipated by United States Patent No. 6,466,548 (hereinafter referred to as Fitzgerald). The Examiner had also rejected claims 3, 15 and 29 under 35 U.S.C. §103(a) as being unpatentable over Fitzgerald. In the current Office Action, the Examiner continues to reject claims 1, 2, 4-14, 16-28, 30-38 and 40 under 35 U.S.C. §102(e) as being anticipated by Fitzgerald and claims 3, 15 and 29 under 35 U.S.C. §103(a) as being unpatentable over Fitzgerald.

The applicant is unclear as to what the Examiner's considers to be the new grounds of rejection as the grounds appear to be the same as that in the prior office action. The Applicant therefore respectfully requests a clarification on this point.

C. Rejection under 35 U.S.C. §102 & Reply

The Examiner has rejected claims 1, 2, 4-14, 16-28, 30-38 and 40 under 35 U.S.C. §102(e) as being anticipated by United States Patent No. 6,466,548 (hereinafter referred to as Fitzgerald). The Applicant respectfully submits that claims 1, 2, 4-14, 16-28, 30-38 and 40, as amended, are neither anticipated nor rendered obvious by Fitzgerald.

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Claim 1

The Examiner's attention is directed to the following limitations of claim 1 (emphasis added):

1. A method for controlling an operative setting of a communications link, the communications link being capable of acquiring a plurality of operative settings, said method comprising:
 - a) comparing audio quality in the communications link **under at least two operative settings**;
 - b) **selecting an operative setting from the at least two operative settings** at least in part on the basis of the comparing in a);
 - c) sending a control signal to at least one component in the communications link to cause the communications link to attempt to acquire the selected setting.

The Applicant respectfully submits that the reference cited by the Examiner does not disclose, teach or suggest the subject matter of claim 1. Without limiting the generality of the foregoing, the Applicant respectfully submits that the reference cited by the Examiner does not disclose, teach or suggest the above-emphasized limitations of amended claim 1.

As the Examiner has noted in the Office Action, Fitzgerald provides a hop by hop loopback system that identifies and locates the causes of audio Quality of Service (QoS) problems by "analyzing different router delays" (p. 3) in a distributed packet switched network, and "once the location and source of the QoS problems is identified steps are taken to correct it such as setting priority bits in the audio packets" (p. 3).

Nowhere, however, in the analyzing of different router delays and setting of priority bits in audio packets, is there taught a comparison of (at least) two settings and the selection of one of those (at least) two settings. Put more specifically, there is nothing in Fitzgerald that teaches or suggests the steps of "comparing audio quality ... under at least two operative settings; [and] selecting an operative setting **from the at least two operative settings**" (emphasis added) as required in amended claim 1. Rather, Fitzgerald only mentions analyzing a link under one condition, whatever condition it is, and identifying where delay or congestion occurs and describes ways this could be improved (e.g. such as setting priority bits in the audio packets).

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However, Fitzgerald does not compare the audio quality of the link under different operative settings.

It appears from a reading of the Office Action that there is a discrepancy between the interpretation of the language of the claims by the Examiner and the same language as it is used in the specification. More specifically, it seems that the Examiner is not looking to the specification to interpret what the words in the claims mean. Rather the Examiner appears to be interpreting the words in the claims in isolation and/or with regards to the cited art. The Applicant respectfully disagrees with the Examiner's interpretation and submits that the language of the claims should be interpreted such as to be consistent with the specification.

As indicated in MPEP section 2111, during patent examination, the pending claims must be "given *>their< broadest reasonable interpretation *consistent with the specification*." (*our emphasis*) *In re Hyatt*, 211 F.3d 1367, 1372, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000). In addition, the case law indicates that, when interpreting the language of the claims, the specification (intrinsic evidence) should be considered (see *Philipps v. AWH* – July 12, 2005). The applicant submits that the interpretation given by the Examiner is not consistent with that of the specification.

In particular, in claim 1, the term "different operative settings" when referring to a communication link, when interpreted in light of the specification, means that the link may be operated using different types of processing operations applied to an audio signal. The term "different operative settings" may also be used to refer to situations where no processing operation is applied (by-pass setting). However, in the Office Action, the examiner's interprets the term "operative settings" as being different possible paths through the network. The Applicant submits that this interpretation is not consistent with the use of the term "operative settings" in the specification. The different paths referred to by the Examiner are not different operative settings at least within the meaning intended by the specification. The Applicant submits that a person skilled in the art, in light of the specification, would not interpret different paths to be different operative settings as used in the claims.

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In light of the foregoing, the Applicant respectfully submits that claim 1 is neither anticipated nor rendered obvious by Fitzgerald and as such, the Examiner is respectfully requested to withdraw the rejection of amended claim 1.

Claims 2, 4-8 and 10-12

Claims 2, 4-8 and 10-12 depend from claim 1 and therefore include by reference all the limitations of claim 1. As such, claims 2, 4-8 and 10-12 are also believed to be in allowable form and the Examiner is respectfully requested to withdraw the rejection of claims 2, 4-8 and 10-12.

Claim 9

Dependent claim 9 reads as follows:

9. *A method as defined in claim 1, wherein the communications link is capable of acquiring two operative settings namely a bypass setting and an active setting, when in the bypass setting the communications link transmitting an audio signal substantially unaltered, when in the active setting the communications link transmitting an audio signal subsequent to at least one processing operation on the audio signal.*

Claim 9 depends from claim 1 and therefore include by reference all the limitations of claim 1. As such, claim 9 is also believed to be in allowable form.

Moreover, claim 9 is further patentable on the grounds that none of the documents cited teaches or suggests "wherein the communications link is capable of acquiring two operative settings namely a bypass setting and an active setting".

On page 10 of the office action, the Examiner interprets the terms "bypass setting" and "active setting" to mean prioritized packets and non-prioritized packets as used in Fitzgerald. The applicant respectfully submits that this interpretation is inconsistent with the use of these terms in the present specification. More specifically, throughout the present specification, the terms "bypass setting" and "active setting" are used in a consistent but completely different fashion. The Examiner is invited to refer, for example, to p. 6 lines 5-14 of the specification. This excerpt is reproduced below for the Examiner's ease of reference:

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"In a specific example of implementation, the communications link is capable of acquiring two operative settings namely a bypass setting and an active setting. When in the bypass setting, the communications link transmits an audio signal substantially unaltered and, when in the active setting, the communications link transmits an audio signal subsequent to at least one processing operation on the audio signal. The processing operations may include for example echo cancellation, signal level adjustment, noise conditioning and noise reduction among others."

As stated in MPEP section 2111, during patent examination, the pending claims must be "given *their< broadest reasonable interpretation *consistent with the specification.*" (our emphasis) *In re Hyatt*, 211 F.3d 1367, 1372, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000). In addition, the case law indicates that, when interpreting the language of the claims, the specification (intrinsic evidence) should be considered (see *Philipps v. AWH* – July 12, 2005). The applicant submits that the interpretation given by the Examiner is not consistent with that of the specification.

In light of the above, the applicant submits that claim 9 is neither anticipated nor rendered obvious by Fitzgerald and is in allowable form.

Claim 13

The Examiner's attention is directed to the following limitations of amended claim 13 (emphasis added):

13. *An apparatus for controlling an operative setting of a communications link, the communications link being capable of acquiring a plurality of operative settings, said apparatus comprising:*
- a) *an input for receiving data elements indicative of audio quality in the communications link under at least two operative settings;*
 - b) *a processing unit coupled to said input, said processing unit being operative for:*
 - i) *comparing the data elements received at the input under the at least two operative settings;*
 - ii) *selecting an operative setting from the at least two operative settings at least in part on the basis of the comparing in i);*
 - iii) *generating a control data element suitable for causing the communications link to attempt to acquire the selected setting;*
 - c) *an output for releasing a control signal indicative of the control data element to at least one component in the communications link for causing the communications link to attempt to acquire the selected setting.*

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The Applicant respectfully submits that the reference cited by the Examiner does not disclose, teach or suggest the subject matter of amended claim 13. Without limiting the generality of the foregoing, the Applicant respectfully submits that, for the same reasons as those set forth with respect to claim 1, Fitzgerald does not disclose, teach or suggest the above-emphasized limitations of amended claim 13.

In light of the foregoing, the Applicant respectfully submits that amended claim 13 distinguishes over the cited art, and as such is believed to be in condition for allowance.

Claims 14, 16, 20 and 22-24

Claims 14, 16, 20 and 22-24 depend from claim 13 and therefore include all the limitations of amended claim 13. As such, claims 14, 16, 20 and 22-24 are also believed to be in allowable form and the Examiner is respectfully requested to withdraw the rejection of claims 14, 16, 20 and 22-24.

Claim 21

Dependent claim 21 reads as follows:

21. An apparatus as defined in claim 13, wherein the communications link is capable of acquiring two operative settings namely a bypass setting and an active setting, when in the bypass setting the communications links transmitting an audio signal substantially unaltered, when in the active setting the communications links transmitting an audio signal subsequent to at least one processing operation on the audio signal.

Claim 21 depends from claim 13 and therefore includes by reference all the limitations of claim 13. As such, claim 21 is also believed to be in allowable form.

Moreover, for the same reasons as those described with respect to claim 9, claim 21 is further patentable on the grounds that none of the documents cited teaches or suggests "wherein the communications link is capable of acquiring two operative settings namely a bypass setting and an active setting".

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In light of the above, the applicant submits that claim 21 is neither anticipated nor rendered obvious by Fitzgerald and is in allowable form.

Claim 25

The Examiner's attention is directed to the following limitations of amended claim 25 (emphasis added):

- 25. An apparatus for controlling an operative setting of a communications link, the communications link being capable of acquiring two operative settings namely a bypass setting and an active setting, when in the bypass setting the communications link transmitting an audio signal substantially unaltered, when in the active setting the communications link transmitting an audio signal subsequent to at least one processing operation on the audio signal, said apparatus comprising:*
- a) an input for receiving data elements indicative of an effectiveness of the at least one processing operation on the audio signal;*
 - b) a processing unit coupled to said input, said processing unit being operative for:*
 - i) selecting one of the bypass setting and the active setting at least in part on the basis of the data elements received at the input;*
 - ii) generating a control data element suitable for causing the communications link to attempt to acquire the selected setting;*
 - c) an output for releasing a control signal indicative of the control data element to at least one component in the communications link for causing the communications link to attempt to acquire the selected setting.*

The Applicant respectfully submits that the reference cited by the Examiner does not disclose, teach or suggest the subject matter of claim 25. Without limiting the generality of the foregoing, the Applicant respectfully submits that Fitzgerald does not disclose, teach or suggest the above-emphasized limitations of amended claim 25.

Fitzgerald is completely silent on the issue of tandem vocoding, and, more specifically, on an apparatus "capable of acquiring two operative settings namely a bypass setting and an active setting, when in the bypass setting the communications link transmitting an audio signal substantially unaltered, when in the active setting the communications link transmitting an audio signal subsequent to at least one processing operation on the audio signal ... comprising: ... **a processing unit operative for: selecting one of the bypass setting and the active setting**" (emphasis added) as required in amended claim 25.

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The Applicant re-iterates his arguments set forth with respect to claim 1 with respect to the interpretation of the language of the claims. More specifically, the Applicant respectfully disagrees with the Examiner's interpretation and submits that the language of the claims should be interpreted such as to be consistent with the specification.

In particular, the term "different operative settings" when referring to a communication link, when interpreted in light of the specification, means that the link may be operated using different types of processing operations applied to an audio signal. The term "different operative setting" may also be used to refer to the situation where no processing operation is applied (e.g. the by-pass setting). However, in the Office Action, the examiner's interprets the term "operative settings" as being different possible paths through the network. The Applicant submits that this interpretation is not consistent with the use of the term "operative settings" in the specification. The different paths referred to by the Examiner are not different operative settings at least within the meaning intended by the specification. The Applicant submits that a person skilled in the art, in light of the specification, would not interpret different paths to be different operative settings as used in the claims.

Moreover, in claim 25, includes the feature of **"selecting one of the bypass setting and the active setting"**. The Office Action does not address this feature with reference to claim 25. In the office action, on p. 7, the Examiner simply refers the Applicant to the arguments set forth with respect to claim 1. The Applicant would like to bring to the attention of the Examiner that the language of claim 25 **"selecting one of the bypass setting and the active setting"** differs from that of claim 1 and that claim 25 includes features absent from those set forth in claim 1. The Examiner has not addressed these features in the office action and has not shown whether the prior art includes these features of claim 25. The Office Action addresses similar features on p. 10 with respect to claims 9, 21, and 35. As indicated above, the Examiner interprets the terms "bypass setting" and "active setting" to mean prioritized packets and non-prioritized packets as used in Fitzgerald. The applicant respectfully submits that this interpretation is inconsistent with the use of these terms in the present specification. More specifically, throughout the present specification, the term "bypass" is used in a completely different fashion as that used by the

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Examiner. The Examiner is invited to refer, for example, to p. 6 lines 5-14 of the specification. This Excerpt is reproduced below for the Examiner's ease of reference:

"In a specific example of implementation, the communications link is capable of acquiring two operative settings namely a bypass setting and an active setting. When in the bypass setting, the communications link transmits an audio signal substantially unaltered and, when in the active setting, the communications link transmits an audio signal subsequent to at least one processing operation on the audio signal. The processing operations may include for example echo cancellation, signal level adjustment, noise conditioning and noise reduction among others."

The applicant submits that marking a packet as being a priority or non-priority packet does not alter the audio signal. Actually, in Fitzgerald the actual audio signal is not manipulated at all during the marking a packet as being a priority or non-priority packet. Rather the marking a packet as being a priority or non-priority packet only affects the packet-envelop or header and not the audio signal contained therein.

As stated in MPEP section 2111, during patent examination, the pending claims must be "given *their< broadest reasonable interpretation *consistent with the specification.*" (our emphasis) *In re Hyatt*, 211 F.3d 1367, 1372, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000). In addition, the case law indicates that, when interpreting the language of the claims, the specification (intrinsic evidence) should be considered (see *Philipps v. AWH* – July 12, 2005). The applicant submits that the interpretation given by the Examiner is not consistent with that of the specification.

In light of the foregoing, the Applicant respectfully submits that claim 25 is neither anticipated nor rendered obvious by Fitzgerald and as such, the Examiner is respectfully requested to withdraw the rejection of amended claim 25.

Claim 26

Claim 26 depends from claim 25 and therefore includes all the limitations of amended claim 25. As such, claim 26 is also believed to be in allowable form and the Examiner is respectfully requested to withdraw the rejection of claim 26.

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Claim 27.

The Examiner's attention is directed to the following limitations of amended claim 27 (emphasis added):

- 27. A computer readable medium comprising a program element suitable for execution by a computing apparatus for controlling an operative setting of a communications link, the communications link being capable of acquiring a plurality of operative settings, said computing apparatus comprising:*
- a) a memory unit for storing the program element;*
 - b) a processor operatively coupled to said memory unit, said program element when executing on said processor being operative for implementing:*
 - i) an input for receiving data elements indicative of audio quality in the communications link under at least two operative settings;*
 - ii) a processing unit for:*
 - (1) comparing the data elements received at the input under the at least two operative settings;*
 - (2) selecting an operative setting from the at least two operative settings at least in part on the basis of the comparing in (1);*
 - (3) generating a control data element suitable for causing the communications link to attempt to acquire the selected setting;*
 - iii) an output for releasing a control signal indicative of the control data element to at least one component in the communications link for causing the communications link to attempt to acquire the selected setting.*

The Applicant respectfully submit that the reference cited by the Examiner does not disclose, teach or suggest the subject matter of amended claim 27. Without limiting the generality of the foregoing, the Applicant respectfully submits that, for the same reasons as those set forth with respect to claim 1, Fitzgerald does not disclose, teach or suggest the above-emphasized limitations of amended claim 27.

In light of the foregoing, the Applicant respectfully submits that amended claim 27 distinguishes over the cited art, and as such is believed to be in condition for allowance.

Claims 28, 30-34 and 36-38

Claims 28 and 30-34 and 36-38 depend from claim 27 and therefore include all the limitations of amended claim 27. As such, claims 28 and 30-34 and 36-38 are also believed to be in allowable form and the Examiner is respectfully requested to withdraw the rejection of claims 28 and 30-34 and 36-38.

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Claim 35

Dependent claim 35 reads as follows:

35. *A computer readable medium as defined in claim 27, wherein the communications link is capable of acquiring two operative settings namely a bypass setting and an active setting, when in the bypass setting the communications link transmitting an audio signal substantially unaltered, when in the active setting the communications link transmitting an audio signal subsequent to at least one processing operation on the audio signal.*

Claim 35 depends from claim 27 and therefore include by reference all the limitations of claim 27. As such, claim 35 is also believed to be in allowable form.

Moreover, for the same reasons as those described with respect to claim 9, claim 35 is further patentable on the grounds that none of the documents cited teaches or suggests "wherein the communications link is capable of acquiring two operative settings namely a bypass setting and an active setting".

In light of the above, the applicant submits that claim 35 is neither anticipated nor rendered obvious by Fitzgerald and is in allowable form.

Claim 40

The Examiner's attention is directed to the following limitations of amended claim 40 (emphasis added):

40. *An apparatus for controlling an operative setting of a communications link, the communications link being capable of acquiring a plurality of operative settings, said apparatus comprising:*
- a) means for receiving data elements indicative of audio quality in the communications link under at least two operative settings;*
 - b) processing means operative for:*
 - i) comparing the data elements received;*
 - ii) selecting an operative setting from the at least two operative settings at least in part on the basis of the comparing in i);*
 - iii) generating a control data element suitable for causing the communications link to attempt to acquire the selected setting;*
 - c) means for releasing a control signal indicative of the control data element to at least one component in the communications link for causing the communications link to attempt to acquire the selected setting.*

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The Applicant respectfully submits that the reference cited by the Examiner does not disclose, teach or suggest the subject matter of amended claim 40. Without limiting the generality of the foregoing, the Applicant respectfully submits that, for the same reasons as those set forth with respect to claim 1, Fitzgerald do not disclose, teach or suggest the above-emphasized limitations of amended claim 40.

In light of the foregoing, the Applicant respectfully submits that amended claim 40 distinguishes over the cited art, and as such is believed to be in condition for allowance.

C. Rejection under 35 U.S.C. §103

The Examiner has rejected claims 3, 15 and 29 under 35 U.S.C. §103(a) as being unpatentable over Fitzgerald. The Examiner has further rejected claim 39 under 35 U.S.C. §103(a) as being obvious over Fitzgerald in view of United States Patent No. 6,574,469 (hereinafter referred to as Xiang *et al.*). The Applicant respectfully submits that claims 3, 15, 29 and 39 are not rendered obvious by the cited documents and are in allowable form.

Claims 3, 15, and 29

Claims 3, 15 and 29 depend from claims 1, 13, and 27, respectively, and therefore include all the features of one of those independent claims, including those features neither taught nor suggested by Fitzgerald.

According to MPEP 706.02(j), in order to establish a *prima facie* case of obviousness, "the prior art reference (or references when combined) must teach or suggest all the claim limitations". As such, it is respectfully submitted that the Examiner has not presented a *prima facie* case of obviousness in accordance with MPEP 706.02(j) since Fitzgerald does not teach or suggest all of the limitations of the above-identified claims. Thus, it is respectfully requested that Examiner withdraw the rejection of claims 3, 15 and 29.

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Claim 39

With regard to the Examiner's rejection of claim 39 as being unpatentable over Fitzgerald in view of Xiang *et al.*, the Applicant respectfully disagrees with the Examiner's rejection on the basis that the Examiner has failed to establish a *prima facie* case of obviousness.

No Motivation to Combine the References

In the Office Action response filed with the USPTO on September 16, 2005, the Applicant submitted reasons supporting his position regarding claim 39. On pages 2 and 3 of the Office Action, the Examiner disagreed with the Applicant that Fitzgerald and Xiang *et al.* related to non-analogous art. In support for his position, the Examiner argues that Fitzgerald and Xiang *et al.* are analogous since they can both be used in a VoIP network. The Applicant respectfully disagrees and submits that the mere fact that the above references can both be used in a VoIP network is not sufficient for Fitzgerald and Xiang *et al.* to be analogous art.

More specifically, Fitzgerald provides a hop by hop loopback system that identifies and locates the causes of audio QoS problems in a distributed packet switched network by analyzing different router delays in the network. Once the location and source of the QoS problem are identified, "priority bits in the audio packets to increase priority" (col. 5, lines 25-26). In contrast, Xiang *et al.* provides a "method of minimizing the number of transcodings of a speech signal during a conference call ... when the call is transported over a packet-switched network... in which Tandem Free Operation (TFO) is utilized to control transcoding of the speech signal" (col. 2, lines 20-27). Even if they can both be used in a similar network, namely VoIP, it does not result in them being analogous art. If that were the case then technology related to speech recognition and echo cancellation, for example, which can also be used in a VoIP network would also be considered analogous to the above as well as a multitude of other unrelated technology by the mere fact that they could be used on a VoIP network.

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As previously argued, the subject matter of Fitzgerald is completely unrelated to the concept of Tandem Free Operation and therefore would derive no benefit from "minimizing the number of transcodings of a speech signal during a conference call". Similarly, the Applicant respectfully submits that the subject matter of Xiang *et al.* is completely unrelated to, and would therefore derive no benefit from, a hop by hop loopback system for determining the location and causes of audio QoS. As such, the Applicant respectfully maintains that Fitzgerald and Xiang *et al.* are directed to non-analogous art and that there is no reason, suggestion or motivation to combine the two.

References do not teach all the claim limitations

In addition to the above, the Examiner's attention is directed to the following limitations of amended claim 39 (emphasis added):

39. *An apparatus for selectively enabling tandem-free operation of a communications link, the communications link comprising at least one functional stage operative to implement at least one processing operation on an audio signal, during tandem-free operation said at least one functional stage being disabled, said apparatus comprising:*
- a) an input for receiving data elements indicative of an effectiveness of the at least one processing operation on the audio signal;*
 - b) a processing unit coupled to said input, said processing unit being operative for processing the data element to generate a control data element suitable for causing the communications link to selectively enable tandem-free operation of the communications link;*
 - c) an output for releasing a control signal indicative of the control data element to the at least one functional stage in the communications link for selectively enabling tandem-free operation.*

The Applicant respectfully submits that the neither of the references cited by the Examiner disclose, teach or suggest the subject matter of claim 39. Without limiting the generality of the foregoing, the Applicant respectfully submits that the references cited by the Examiner do not disclose, teach or suggest the above-emphasized limitations of amended claim 39.

Arguments in support of the above statement were presented by the Applicant in the office action response filed September 16, 2005.

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On pages 4 and 5 of the present Office Action, the Examiner disagreed with the Applicant that Fitzgerald and Xiang *et al.* do not teach or suggest all of the claim limitations. In support for his position the Examiner presents various arguments. In particular, the Examiner indicates that Fitzgerald teaches "*an input for receiving data elements indicative of an effectiveness of the at least one processing operation on the audio signal.*" arguing that this feature corresponds to continuously testing a delay "to ensure that it does not exceed a threshold and if it does the priority is altered". The Applicant respectfully disagrees with the Examiner's interpretation.

As stated above, there appears to be a discrepancy between the interpretation of the language in the claims by the Examiner and the same language as it is used in the specification. The Applicant respectfully submits that the language of the claims should be interpreted such as to be consistent with the specification. (see MPEP section 2111 where it is stated that during patent examination, the pending claims must be "given *>their<* broadest reasonable interpretation *consistent with the specification.*" (*our emphasis*))

In particular, with reference to claim 39, the Examiner appears to be interpreting the expression "the at least one processing operation on the audio signal" as the path selected through the network. The Applicant submits that this interpretation is not consistent with the use of the term "processing operation on the audio signal" in the specification. More specifically, the applicant uses the term "processing operation" to refer to processing operations that alter the audio signal (see the present patent application p.3 lines 20-30; p.6 lines 5-14). Examples of the types of processing operations presented in the applications include, without being limited to, echo cancellation, signal level adjustment, noise conditioning, and noise reduction. Conversely, the different paths referred to by the Examiner are not processing operations on the audio signal at least within the meaning of the specification. The different paths do not operate on the audio signal to alter the audio signal in any way. An alteration is applied to the packets or carrier of the audio signals, which may be marked as priority or non-priority. However, this marking of priority or non-priority does not alter the audio signal at all rather it only affects the packet-envelop. In light of the above, the Applicant submits that the Examiner's interpretation of the expression "processing operation on the audio signal" is not consistent with the use of

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this expression in the specification.

Consequently, Fitzgerald fails to teach or suggest:

“an input for receiving data elements indicative of an effectiveness of the at least one processing operation on the audio signal;”

In addition, Fitzgerald, is completely silent on the issue of tandem vocoding. As such, Fitzgerald fails to teach or suggest:

“ a processing unit ... operative for processing the data element to generate a control data element suitable for causing the communications link to selectively enable tandem-free operation of the communications link”

With respect to Xiang *et al.*, there is nothing in Xiang *et al.* that teaches or suggests:

“an apparatus ... comprising: an input for receiving data elements indicative of an effectiveness of the at least one processing operation on the audio signal” and

“operative for processing the data element to generate a control data element suitable for causing the communications link to selectively enable tandem-free operation of the communications link”

as required by claim 39.

Since no motivation to combine Fitzgerald and Xiang *et al.* is found in either of these references, and because the prior art references, alone or in combination, do not teach or suggest all of the claim limitations, the Applicant respectfully submits that the Examiner has failed to meet to criteria for establishing a *prima facie* case of obviousness as required by MPEP 706.02(j). Thus, it is respectfully requested that Examiner withdraw the rejection of claim 39.

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CONCLUSION

In view of the above, it is submitted that claims 1-40 are in condition for allowance. Reconsideration of the rejections is requested. Allowance of claims 1-40 at an early date is earnestly solicited.

If the application is not considered to be in full condition for allowance, for any reason, the Applicant respectfully requests the constructive assistance and suggestions of the Examiner in drafting one or more acceptable claims pursuant to MPEP 707.07(j) or in making constructive suggestions pursuant to MPEP 706.03 so that the application can be placed in allowable condition as soon as possible and without the need for further proceedings.

Respectfully submitted.



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